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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWT1USA	3888

7590

02/21/2002

HOWSON AND HOWSON
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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

12

DATE MAILED: 02/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1,2,5-7,12 and 15-35.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See attached.

ADVISORY ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112, second paragraph rejection of Claims 1, 6 and 15, of record on page 2 of the previous Action, are withdrawn.

REPEATED REJECTIONS

2. The 35 U.S.C. 102(b) rejection of Claims 1, 5 – 7, 12, 16 – 17, 20 – 26, 29 and 34 as being anticipated by Sacks et al (U.S. Patent No. 4,528,235), the 35 U.S.C. 103(a) rejection of Claims 18 – 19, 27 – 28, 30 – 33 and 35 as being unpatentable over Sacks et al and the 35 U.S.C. 103(a) rejection of Claim 15 as being unpatentable over Sacks et al in view of Newman et al. (European Patent No. 0275102).

ANSWERS TO APPLICANT'S ARGUMENTS


3. Applicant argues, on page 8 of Paper No. 12, that amended Claims 1, 6 and 15 overcome the prior art of record, because the amended claims are directed to a 'core barrier layer consisting essentially of a vapor impermeable non – polyolefin and having a thickness of less than 25 microns.' However, the claims prior to amendment were not directed to a 'core barrier layer consisting essentially of a vapor impermeable non – polyolefin and having a thickness of less than 25 microns.' The amendment therefore raises a new issue, which to be completely addressed would require further search and consideration, and the amendment has therefore not been entered. Even if the amendment were to be entered, the amended claim would not overcome the rejection because when an applicant contends that materials in the prior art are

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excluded by the recitation of 'consisting essentially of,' Applicant has the burden of showing that the introduction of the additional components would materially change the characteristics of Applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964) ; *In re Herz*, 537 F.2d 549, 551 – 552, 190 USPQ 461, 463 (CCPA 1976). Furthermore, as stated on page 2 of the previous Action, Sacks et al teach a layer thickness of 10 – 25 microns (column 3, lines 16 – 26).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 308-7718. FAXs received after 4 P.M. will not be processed until the following business day.


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

2/20/02